Rama Nath Saut and Others Vs Official Trustee of Bengal as Trustee to the estate of late Maniklal Seal

Court: Calcutta High Court

Date of Decision: Nov. 23, 1923

Acts Referred: Bengal Tenancy Act, 1885 â€" Section 102(e)

Citation: 87 Ind. Cas. 1014

Hon'ble Judges: Rankin, J; Mookerjee, J

Bench: Division Bench

Judgement

1. These are two appeals under Clause 15 of the Letters Patent from the judgment of Mr. Justice Newbould in two suits for recovery of arrears of

rent.

2. In each suit the question was as to the amount of rent annually payable by the tenant to the landlord. The landlord relied upon the relevant entry

in a finally published Record of Rights. The tenant contended that the entry had been rebutted and no reliance should be placed thereon. The

primary Court took divergent views in the two suits. In one instance, it was held that the decree should be based on the entry, while in the other it

was ruled that the decree should be in accordance with the admission of the tenant. There were appeals to the District Judge in both the cases. He

came to the conclusion that in neither suit should the decree be based upon the entry in the Record of Rights. In second appeal to this Court, Mr.

Justice Newbould has reversed the decision of the District Judge and has directed that the decree in each case be entered in favour of the, landlord

on the basis of the entry in the Record of Rights. The substantial question in controversy consequently is, whether the entry in the Record of Rights

has been effectively rebutted.

3. u/s 102, Clause (e) of the Bengal Tenancy Act, the Revenue Officer is required to record the rent payable at the time the Record of Rights is

being prepared. As pointed out in Secretary of State v. Nitye Singh 21 C. 38 : 10 Ind. Dec. (N.S.) 658 and Luchmi Pershad v. Ekdeshwar Singh

4 Ind. Cas. 577 : 13 C.W.N. 18, this provision requires the Revenue Officer to determine the existing rent and not to settle a fair rent in respect of

the tenancy. After the Record of Rights has been finally published, Section 103B comes into operation. Sub-section (3) of that section provides

that every entry in a Record of Rights so published shall be evidence of the matter referred to in such entry and shall be presumed to be correct

until it is proved by evidence to be incorrect. Consequently, after final publication the presumption arises that the entry is correct; in other words, in

respect of an entry of rent, the presumption arises that what has been recorded is a correct statement of the existing rent. This presumption may be

rebutted, and the entry may be proved by evidence to be incorrect. This evidence,. as was explained in the case of Bogha Mower v. Ram Lakhan

Misser 41 Ind. Cas. 804 : 27 C.L.J. 107 may be either evidence external to the settlement proceedings or evidence of matters apparent on the

face of those proceedings. To take one illustration, in the case of Sheonandan Persad Sukul v. Bacha Raut 4 Ind. Cas. 54 : 9 C.L.J. 284 evidence

was produced to show that the rent actually payable at the time of the preparation of the Record of Rights was different from the rent entered in

the Record of Rights. This evidence may be either anterior in point of time or subsequent in date to the Record of Rights. To take another

illustration, as pointed out in the case of Bogha Mower v. Ram Lakhan Misser 41 Ind. Cas. 804 : 27 C.L.J. 107, it may appear on the face of the

proceedings of the Revenue Officer that the entry is erroneous. The case before us is of the latter description.

4. The Revenue Officer had to determine the existing rent in respect of each of these tenancies. But the very statement of his reasons for his

conclusions which are set out in his order, dated the 9th December 1916, shows that he did not determine the existing rent. He had, indeed,

relevant evidence before him; but in the consideration of that evidence, he did not apply his own judgment; on the other hand, he applied the

principles which had been formulated for his guidance by his superior officer. It is plain that what he has determined is not the rent actually payable,

but an imaginary rent. Whether that is fair rent it is impossible to determine; but this much is plain that it is not the existing rent in respect of either of

these tenancies. In such circumstances, the conclusion is inevitable that the entry has been rebutted by evidence, namely, by such evidence as

appears on the face of the proceeding of the Revenue Officer himself. We have consequently no doubt that the entry must be deemed to have been

proved incorrect. This leads to the position that the landlord has failed to establish the rate of rent as alleged by him, and the only course open to

the Court is to make a decree on the basis of the admission of the tenants.

5. We have been pressed by the landlord to remand the case to the Court of first instance in order that the suit may be retried; but we are clearly

of opinion that we should not accede to this request. We cannot ignore the fact that the litigation has already lasted for more than five years in four

Courts; and the circumstance that the decree will be made on the basis of the admission made by the tenants, will not preclude an enquiry by the

Court as to the actual contract rate of rent in a subsequent suit.

6. The result is that these appeals are allowed, the decrees of Mr. Justice Newbould set aside and those of the District Judge restored with costs

of two bearings in this Court.